

# Montana State Legislature

## **2013 Session**

### **ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLOWING:**

- **Business Report**
- **Roll Call – Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports etc.**
- **Roll Call Votes**
- **Informational Items**
- **Witness Statements**
- **Any Documents; such as;**
  - \***Petitions if any.**
  - \***Any and all material handed end after the meeting ends.**

**The original is on file at the  
Montana Historical Society  
and may be viewed there.**

**Montana Historical Society  
Archives  
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2013 Legislative Scanner Susie Hamilton**







## BUSINESS REPORT

### MONTANA HOUSE OF REPRESENTATIVES 63rd LEGISLATURE - REGULAR SESSION

#### HOUSE JUDICIARY COMMITTEE

**Date:** Thursday, February 21, 2013  
**Place:** Capitol

**Time:** 8:00 AM  
**Room:** 137

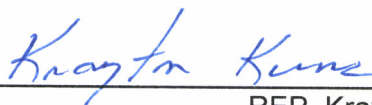
#### BILLS and RESOLUTIONS HEARD:

HB 432 - Generally revise laws related to child abuse and neglect cases - Rep. Kimberly Dudik  
HB 543 - Create a statewide child sexual abuse prevention campaign - Rep. Kimberly Dudik

#### EXECUTIVE ACTION TAKEN:

|        |         |
|--------|---------|
| HB 433 | Do pass |
| HB 504 | Tabled  |
| HB 505 | Do Pass |
| HB 522 | Do pass |

#### Comments:



REP. Krayton Kerns, Chair

**HOUSE OF REPRESENTATIVES**  
**Roll Call**  
**JUDICIARY COMMITTEE**

DATE: 2/21/2013

| <u>NAME</u>                       | <u>PRESENT</u> | <u>ABSENT/<br/>EXCUSED</u> |
|-----------------------------------|----------------|----------------------------|
| REP. JERRY BENNETT, VICE CHAIR    | X              |                            |
| REP. MARGIE MACDONALD, VICE CHAIR | X              |                            |
| REP. ALAN DOANE                   | X              |                            |
| REP. CAROLYN PEASE-LOPEZ          | X              |                            |
| REP. KEITH REGIER                 |                | X <i>exc</i>               |
| REP. VIRGINIA COURT               | X              |                            |
| REP. CLAYTON FISCUS               | X              |                            |
| REP. BRIDGET SMITH                | X              |                            |
| REP. DENNIS LENZ                  | X              |                            |
| REP. JENNY ECK                    | X              |                            |
| REP. KIRK WAGONER                 | X              |                            |
| REP. SARAH LASZLOFFY              | X              |                            |
| REP. WENDY WARBURTON              |                | X <i>exc</i>               |
| REP. ELLIE BOLDMAN HILL           | X              |                            |
| REP. JERRY O'NEIL                 | X              |                            |
| REP. JENIFER GURSKY               | X              |                            |
| REP. DAVID HALVORSON              | X              |                            |
| REP. RYAN LYNCH                   | X              |                            |
| REP. MARK BLASDEL                 |                | X <i>exc</i>               |
| REP. KRAYTON KERNS, CHAIR         | X              |                            |





## HOUSE STANDING COMMITTEE REPORT

February 21, 2013

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 433** (first reading copy -- white) do pass.

Signed: Krayton Kerns  
Representative Krayton Kerns, Chair

- END -

Committee Vote:

Yes 20, No 0

Fiscal Note Required ☐

HB0433001SC.hjk

DL 2-21-13  
11:30



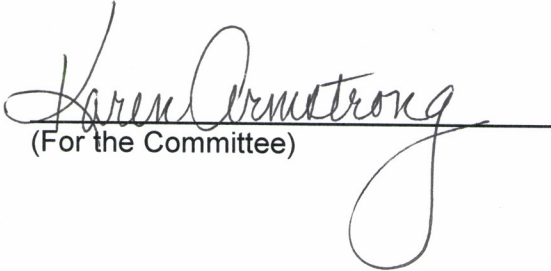
## BILL TABLED NOTICE


### HOUSE JUDICIARY COMMITTEE

The HOUSE JUDICIARY COMMITTEE TABLED

**HB 504 - Revise laws regarding attorneys representing children in abuse and neglect cases - Rep. Kimberly Dudik**

by motion, on **Thursday, February 21, 2013.**

  
(For the Committee)

  
(For the Chief Clerk of the House)

11:30 / 2-21  
(Time) (Date)

February 21, 2013 (10:45am)

Karen Armstrong, Secretary

Phone: 1862  
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## HOUSE STANDING COMMITTEE REPORT

February 21, 2013

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 505** (first reading copy -- white) do pass.

Signed: \_\_\_\_\_

*Representative Krayton Kerns, Chair*

- END -

Committee Vote:

Yes 12, No 8

Fiscal Note Required ☐

HB0505001SC.hjk

2-21-13  
DC 11:30





## HOUSE STANDING COMMITTEE REPORT

February 21, 2013

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 522** (first reading copy -- white) do pass.

Signed: \_\_\_\_\_

*Krayton Kerns*  
Representative Krayton Kerns, Chair

- END -

Committee Vote:

Yes 20, No 0

Fiscal Note Required ☐

HB0522001SC.hjk

*DC* 2-21-13  
11:30

**HOUSE OF REPRESENTATIVES**  
**Roll Call Vote**  
**JUDICIARY COMMITTEE**

DATE: 2/21/2013 BILL NO. 43 MOTION NO. remove from tabled  
 MOTION: \_\_\_\_\_

| NAME                              | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|-----------------------------------|-----|----|--|
| REP. JERRY BENNETT, VICE CHAIR    |     | X  |  |
| REP. MARGIE MACDONALD, VICE CHAIR | X   |    |  |
| REP. ALAN DOANE                   |     | X  |  |
| REP. CAROLYN PEASE-LOPEZ          | X   |    |  |
| REP. KEITH REGIER                 |     |    |  |
| REP. VIRGINIA COURT               | X   |    |  |
| REP. CLAYTON FISCUS               |     | X  |  |
| REP. BRIDGET SMITH                | X   |    |  |
| REP. DENNIS LENZ                  |     | X  |  |
| REP. JENNY ECK                    | X   |    |  |
| REP. KIRK WAGONER                 |     | X  |  |
| REP. SARAH LASZLOFFY              |     | X  |  |
| REP. WENDY WARBURTON              |     |    |  |
| REP. ELLIE BOLDMAN HILL           | X   |    |  |
| REP. JERRY O'NEIL                 |     | X  |  |
| REP. JENIFER GURSKY               | X   |    |  |
| REP. DAVID HALVORSON              |     | X  |  |
| REP. RYAN LYNCH                   | X   |    |  |
| REP. MARK BLASDEL                 |     |    |  |
| REP. KRAYTON KERNS, CHAIR         |     | X  |  |

8      9      failed



**HOUSE OF REPRESENTATIVES**  
**Roll Call Vote**  
**JUDICIARY COMMITTEE**

DATE: 2/21/2013 BILL NO 433 MOTION NO. \_\_\_\_\_  
MOTION: \_\_\_\_\_

| <u>NAME</u>                       | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|-----------------------------------|-----|----|--|
| REP. JERRY BENNETT, VICE CHAIR    | X   |    |  |
| REP. MARGIE MACDONALD, VICE CHAIR | X   |    |  |
| REP. ALAN DOANE                   | X   |    |  |
| REP. CAROLYN PEASE-LOPEZ          | X   |    |  |
| REP. KEITH REGIER                 | X   |    | pr   |
| REP. VIRGINIA COURT               | X   |    |  |
| REP. CLAYTON FISCUS               | X   |    |  |
| REP. BRIDGET SMITH                | X   |    |  |
| REP. DENNIS LENZ                  | X   |    |  |
| REP. JENNY ECK                    | X   |    |  |
| REP. KIRK WAGONER                 | X   |    |  |
| REP. SARAH LASZLOFFY              | X   |    |  |
| REP. WENDY WARBURTON              | X   |    | pr   |
| REP. ELLIE BOLDMAN HILL           | X   |    |  |
| REP. JERRY O'NEIL                 | X   |    |  |
| REP. JENIFER GURSKY               | X   |    |  |
| REP. DAVID HALVORSON              | X   |    |  |
| REP. RYAN LYNCH                   | X   |    |  |
| REP. MARK BLASDEL                 | X   |    | pr   |
| REP. KRAYTON KERNS, CHAIR         | X   |    |  |

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0

**HOUSE OF REPRESENTATIVES**  
**Roll Call Vote**  
**JUDICIARY COMMITTEE**

DATE: 2/21/2013 BILL NO 505 MOTION NO. \_\_\_\_\_  
MOTION: \_\_\_\_\_

| NAME                              | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|-----------------------------------|-----|----|--|
| REP. JERRY BENNETT, VICE CHAIR    | X   |    |  |
| REP. MARGIE MACDONALD, VICE CHAIR |     | X  |  |
| REP. ALAN DOANE                   | X   |    |  |
| REP. CAROLYN PEASE-LOPEZ          |     | X  |  |
| REP. KEITH REGIER                 | X   |    | pr   |
| REP. VIRGINIA COURT               |     | X  |  |
| REP. CLAYTON FISCUS               | X   |    |  |
| REP. BRIDGET SMITH                |     | X  |  |
| REP. DENNIS LENZ                  | X   |    |  |
| REP. JENNY ECK                    |     | X  |  |
| REP. KIRK WAGONER                 | X   |    |  |
| REP. SARAH LASZLOFFY              | X   |    |  |
| REP. WENDY WARBURTON              | X   |    | pr   |
| REP. ELLIE BOLDMAN HILL           |     | X  |  |
| REP. JERRY O'NEIL                 | X   |    |  |
| REP. JENIFER GURSKY               |     | X  |  |
| REP. DAVID HALVORSON              | X   |    |  |
| REP. RYAN LYNCH                   |     | X  |  |
| REP. MARK BLASDEL                 | X   |    | pr   |
| REP. KRAYTON KERNS, CHAIR         | X   |    |  |

12 8



# AUTHORIZED COMMITTEE PROXY

I request to be excused from the \_\_\_\_\_

*Judiciary*

Committee because of other commitments. I desire to leave my proxy vote with:

*Jimmy Bennett*

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

|                       |          |  |
|-----------------------|----------|--|
| <i>HB 433</i>         | <i>X</i> |  |
| <i>HB 505</i>         | <i>X</i> |  |
| <i>HB 522</i>         | <i>X</i> |  |
| <i>Table 17 B 504</i> | <i>X</i> |  |
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Rep. \_\_\_\_\_

(Signature)

Date \_\_\_\_\_

*2/21/13*







# AUTHORIZED COMMITTEE PROXY

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

James Burnett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

|                   |              |  |
|-------------------|--------------|--|
| <del>HB 433</del> | <del>X</del> |  |
|                   |              |  |
| <del>HB 505</del> | <del>X</del> |  |
|                   |              |  |
| <del>HB 522</del> | <del>X</del> |  |
|                   |              |  |
| Title HB 504      | X            |  |
|                   |              |  |
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BILL/AMENDMENT

AYE NO

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Rep. Shirley Dorez  
(Signature)

Date 2/21/13



# AUTHORIZED COMMITTEE PROXY

I request to be excused from the \_\_\_\_\_

*Judiciary*

Committee because of other commitments. I desire to leave my proxy vote with:

*Henry Bennett*

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

|                     |          |  |
|---------------------|----------|--|
| <i>HB 433</i>       | <i>Y</i> |  |
|                     |          |  |
| <i>HB 505</i>       | <i>Y</i> |  |
|                     |          |  |
| <i>HB 522</i>       | <i>Y</i> |  |
|                     |          |  |
| <i>Table HB 504</i> | <i>Y</i> |  |
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Rep. \_\_\_\_\_

*Keith Regier*  
(Signature)

Date \_\_\_\_\_

*2/21/13*



**AUTHORIZED  
COMMITTEE PROXY**

I request to be excused from the \_\_\_\_\_

Committee because of other commitments. I desire to leave my proxy vote with:

\_\_\_\_\_ *Jerry Bennett*

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

|                          |          |  |
|--------------------------|----------|--|
| <i>HB 433</i>            | <i>X</i> |  |
|                          |          |  |
| <i>HB 505</i>            | <i>X</i> |  |
|                          |          |  |
| <i>HB 522</i>            | <i>X</i> |  |
|                          |          |  |
| <i>Table HB 504</i>      | <i>X</i> |  |
| <i>Amo HB 540 L. HAS</i> | <i>X</i> |  |
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Rep. \_\_\_\_\_

(Signature)

Date *2/21/13*

**MONTANA House of Representatives**  
**Visitors Register**  
**HOUSE JUDICIARY COMMITTEE**

**Thursday, February 21, 2013**

## HB 432 - Generally revise laws related to child abuse and neglect cases

**Sponsor: Rep. Kimberly Dudik**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA House of Representatives**  
**Visitors Register**  
**HOUSE JUDICIARY COMMITTEE**

**Thursday, February 21, 2013**

## HB 543 - Create a statewide child sexual abuse prevention campaign

**Sponsor: Rep. Kimberly Dudik**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



OFFICE OF THE STATE PUBLIC DEFENDER  
Costs of Representation of Children  
in Dependent and Neglect Cases  
FY2012

| REGION        | REGION NAME | JUDICIAL DISTRICT                | COUNTY   | CONTRACT DN COSTS | CONTRACT ATTORNEYS | # OF CHILDREN REPRESENTED BY CONTRACT ATTORNEYS | FTE DN COSTS | FTE | # of CHILDREN REPRESENTED BY FTE |
|---------------|-------------|----------------------------------|--|-------------------|--------------------|---|--------------|-----|----------------------------------|
| 9             | Billings    | 13<br>22<br>22                   | Yellowstone<br>Stillwater<br>Carbon<br>Big Horn                                      | \$ 14,115         | 8                  | 33  | \$ 1,052     | 3   | 4                                |
| 10            | Glendive    | 7<br>7<br>7<br>7<br>15<br>15     | Richland<br>Dawson<br>McCon<br>Wibaux<br>Prairie<br>Daniels<br>Sheridan<br>Roosevelt | \$ 18,471         | 5                  | 55  | \$ 1,029     | 1   | 8                                |
| 11            | Miles City  | 16<br>16<br>16<br>16<br>16<br>16 | Garfield<br>Rosebud<br>Treasure<br>Custer<br>Powder River<br>Carter<br>Fallon        | \$ 6,174          | 5                  | 23  | \$ 319       | 1   | 1                                |
| TOTAL FY 2012 |             |                                  |  | \$ 431,889        | 72                 | 904   | \$ 16,235    | 14  | 88                               |

Assumptions:

1. The agency's payable and payroll systems (SABHRS) track payments by region and not by judicial district or county. However, we have provided the judicial district and counties by our region name and number.
2. The contract attorney counts and dollar amounts were taken from the SABHRS accounts payable system.
3. The agency's conflict coordinator reviewed these numbers to develop a percentage of the dollar amount and case count for each contract attorney in representing children.
4. The FTE DN costs and the number of FTEs that work on DN cases involving children were provided through a regional survey.
5. The dollar values only contain direct costs and no regional overheads.
6. The agency case management system does not distinguish among a parent, child or other involved parties.





OFFICE OF THE STATE PUBLIC DEFENDER  
Costs of Representation of Children  
in Dependent and Neglect Cases  
FY2012

| REGION | REGION NAME | JUDICIAL DISTRICT | COUNTY        | CONTRACT DN COSTS | CONTRACT ATTORNEYS | # OF CHILDREN REPRESENTED BY |                    | FTE DN COSTS | FTE | # of CHILDREN REPRESENTED BY FTE |
|--------|-------------|-------------------|---------------|-------------------|--------------------|------------------------------|--------------------|--------------|-----|----------------------------------|
|        |             |                   |               |                   |                    | CONTRACT ATTORNEYS           | CONTRACT ATTORNEYS |              |     |                                  |
| 5      | Butte       | 2                 | Silver Bow    | \$ 28,776         | 2                  | 32                           | \$                 | -            | 0   | 0                                |
|        |             | 3                 | Granite       |                   |                    |                              |                    |              |     |                                  |
|        |             | 3                 | Powell        |                   |                    |                              |                    |              |     |                                  |
|        |             | 3                 | Deer Lodge    |                   |                    |                              |                    |              |     |                                  |
|        |             | 5                 | Madison       |                   |                    |                              |                    |              |     |                                  |
|        |             | 5                 | Beaverhead    |                   |                    |                              |                    |              |     |                                  |
| 6      | Havre       | 12                | Hill          | \$ 5,280          | 8                  | 17                           | \$                 | 3,545        | 1   | 42                               |
|        |             | 12                | Liberty       |                   |                    |                              |                    |              |     |                                  |
|        |             | 12                | Choteau       |                   |                    |                              |                    |              |     |                                  |
|        |             | 17                | Blaine        |                   |                    |                              |                    |              |     |                                  |
|        |             | 17                | Phillips      |                   |                    |                              |                    |              |     |                                  |
|        |             | 17                | Valley        |                   |                    |                              |                    |              |     |                                  |
| 7      | Lewistown   | 10                | Judith Basin  | \$ 246            | 1                  | 2                            | \$                 | 563          | 1   | 4                                |
|        |             | 10                | Fergus        |                   |                    |                              |                    |              |     |                                  |
|        |             | 10                | Petroleum     |                   |                    |                              |                    |              |     |                                  |
|        |             | 14                | Meagher       |                   |                    |                              |                    |              |     |                                  |
|        |             | 14                | Wheatland     |                   |                    |                              |                    |              |     |                                  |
|        |             | 14                | Golden Valley |                   |                    |                              |                    |              |     |                                  |
|        |             | 14                | Musselshell   |                   |                    |                              |                    |              |     |                                  |
| 8      | Bozeman     | 6                 | Park          | \$ 17,826         | 4                  | 39                           | \$                 | 1,018        | 1   | 2                                |
|        |             | 6                 | Sweet Grass   |                   |                    |                              |                    |              |     |                                  |
|        |             | 18                | Gallatin      |                   |                    |                              |                    |              |     |                                  |



OFFICE OF THE STATE PUBLIC DEFENDER  
Costs of Representation of Children  
in Dependent and Neglect Cases  
FY2012

| REGION | REGION NAME | JUDICIAL DISTRICT | COUNTY        | CONTRACT DN COSTS | CONTRACT ATTORNEYS | # OF CHILDREN REPRESENTED BY |                    | FTE DN COSTS | FTE | # of CHILDREN REPRESENTED BY FTE |
|--------|-------------|-------------------|---------------|-------------------|--------------------|------------------------------|--------------------|--------------|-----|----------------------------------|
|        |             |                   |               |                   |                    | CONTRACT ATTORNEYS           | CONTRACT ATTORNEYS |              |     |                                  |
| 1      | Kalispell   | 11                | Flathead      | \$ 78,766         | 7                  | 173                          | \$                 | -            | 0   | 0                                |
|        |             | 19                | Lincoln       |                   |                    |                              |                    |              |     |                                  |
|        |             | 20                | Sanders       |                   |                    |                              |                    |              |     |                                  |
|        |             | 20                | Lake          |                   |                    |                              |                    |              |     |                                  |
| 2      | Missoula    | 4                 | Mineral       | \$ 157,672        | 19                 | 227                          | \$                 | 7,775        | 4   | 21                               |
|        |             | 4                 | Missoula      |                   |                    |                              |                    |              |     |                                  |
|        |             | 21                | Ravalli       |                   |                    |                              |                    |              |     |                                  |
|        |             |                   |               |                   |                    |                              |                    |              |     |                                  |
| 3      | Great Falls | 8                 | Cascade       | \$ 75,765         | 8                  | 187                          | \$                 | 830          | 1   | 5                                |
|        |             | 9                 | Glacier       |                   |                    |                              |                    |              |     |                                  |
|        |             | 9                 | Toole         |                   |                    |                              |                    |              |     |                                  |
|        |             | 9                 | Pondera       |                   |                    |                              |                    |              |     |                                  |
|        |             | 9                 | Teton         |                   |                    |                              |                    |              |     |                                  |
| 4      | Helena      | 1                 | Lewis & Clark | \$ 28,798         | 5                  | 116                          | \$                 | 104          | 1   | 1                                |
|        |             | 1                 | Broadwater    |                   |                    |                              |                    |              |     |                                  |
|        |             | 5                 | Jefferson     |                   |                    |                              |                    |              |     |                                  |

|               |  |
|---------------|--|
| Maryland      | <p><u>Delores Edwards</u>, Department of Human Resources</p> <p><u>Melanie Klein</u>, Metropolitan Maryland Office</p> <p>Tracy Watkins-Tribbitt, Director, Foster Care Court Improvement Project</p> <p>Althea Stewart Jones, Admin. Office of the Courts</p> <p>Rhonda Lipkin, Child Welfare Advocacy Fellow, Public Justice Center</p> <p>Jessica Lynne Cook Rae, Legal Aid Bureau, Inc.</p> <p>Rosaline McDaniel, Dept of Human Resources</p> <p><u>Stephen Berry</u>, Dept of Human Resources</p> <p><u>Daniel L. Hatcher</u>, Assistant Professor of Law, University Baltimore School of Law</p> <p>Matthew Joseph, Executive Director, Voices for Maryland's Children</p>   |
| Massachusetts | <p><u>Jessica Budnitz</u>, Child Advocacy Program at Harvard Law School</p> <p><u>Andy Cohen</u>, Committee for Public Counsel Services</p> <p>Clare Dalton, NEU Domestic Violence Center</p> <p>Brigid Kennedy-Pfister, Staff Attorney, The Children's Law Center</p> <p>Ronald Corbett, Court Administrator, Mass. Supreme Judicial Court</p> <p>Jacqueline Schelhaudt, Assistant Court Administrator, Juvenile Court Department Administrative Office</p> <p><u>Liz Skinner-Reilly</u>, Dept of Children and Families</p> <p><u>Michael Dsida</u>, Deputy Chief Counsel, Committee for Public Counsel Services</p> <p>Krista Lohr, Committee for Public Counsel Services</p> <p>Virginia Peel, General Counsel, Dept of Children and Families</p> <p>Jetta Bernier, Massachusetts Citizens for Children</p> |
| Michigan      | <p><u>Don Duquette</u>, Child Advocacy Law Clinic, University of Michigan Law School</p> <p>Kathryne O'Grady, Director of Child Welfare Services, State Court Admin. Office</p> <p>Kelly Howard, Court Improvement Program Coordinator, Child Welfare Services Division</p> <p>Jenifer Pettibone, Management Analyst, Michigan State Court Administrator's Office</p> <p><u>Dan Wright</u>, Director, State Court Administrative Office</p> <p>Jack Kresnak, Voices for Michigan's Children</p>  |
| Minnesota     | <p>Mark Fiddler, Esq., Fiddler Law Office</p> <p><u>Judith Nord</u>, Staff Attorney/ CIP Manager, Minnesota Supreme Court</p> <p>Ruth Clinard, Dept of Human Services</p> <p>Susan Krinkie, Social Service Consultant, Dept of Human Services</p> <p><u>Erin Sullivan-Sutton</u>, Dept of Human Services</p>   |
| Mississippi   | <p><u>Dana Gearhart</u>, Mississippi Department of Human Services</p> <p>William Charlton, Mississippi Judicial College</p> <p>Dennis Perkins, Youth Court Program Director</p> <p>Jamie McBride, Director, Court Improvement Program</p> <p><u>Lon Woodruff</u>, Director, Dept of Human Services</p> <p>Alicia Cole, Dept of Human Services</p>  |
| Missouri      | <p><u>Linda Hope</u>, Juvenile and Adult Court Programs</p> <p><u>Norma Rahm</u>, Office of the State Courts Admin.</p> <p>Mary Beck, Professor, University of Missouri School of Law</p> <p><u>Gary Waint</u>, Office of the State Courts Admin.</p> <p>Kathryn Sapp, Dept of Social Services</p> <p><u>Melody Yancey</u>, Acting Assistant Deputy Director, Dept of Social Services</p> <p>F. Scott Gee, Executive Director, Citizens for Missouri's Children</p>  |
| Montana       | <p>Sherri Raftor, Montana Supreme Court</p> <p>Sherry Meador, Montana Supreme Court</p> <p>Janice Basso, Dept of Public Health &amp; Human Services</p>  |
| Nebraska      | <p><u>Victoria Weisz</u>, Ctr. on Children, Families and the Law</p> <p>Bob German, Legal Aid of Nebraska</p> <p>Patrick Carragher, Nebraska Legal Services</p> <p><u>Kathy Bigsby Moore</u>, Voices for Children in Nebraska</p> <p><u>Suzanne Schied</u>, Dept. of Health and Human Services, Children &amp; Family Services</p>   |
| Nevada        | <p><u>Barbara Buckley</u>, Legal Aid Center of Southern Nevada</p> <p>Sheryl Overstreet, Coordinator, Court Improvement Project</p> <p>Annette Ruth Appell, William S. Boyd Professor of Law, William S. Boyd School of Law</p> <p>David Nason, Division of Child and Family Services</p> <p>Barbara Legier, Division of Child and Family Services</p> <p>Betsey Crumrine, Executive Director, Clark County Legal</p> <p>Amber Vestbie, Dept. of Children and Family Services</p> <p>Gard Jameson, Children's Advocacy Alliance</p> <p><u>Erica Turner</u>, Court Improvement Program</p>  |
| New Hampshire | <p><u>Jack Lightfoot</u>, Child and Family Services</p> <p>Sue Carmen, CASA of New Hampshire</p> <p>Ann Lamey, CASA of New Hampshire</p> <p>David Sandberg, CASA of New Hampshire</p> <p><u>Kristy Lamont</u>, Permanency Planning Coordinator</p> <p>Byrry Kennedy, Chief Legal Counsel, Child and Family Services</p> <p>Kristen Neil, Dept of Health and Human Services</p> <p>Ellen Fineberg, Children's Alliance of New Hampshire</p>   |

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?

Points: 10 out of 10

"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MT R. of Prof. Cond. 1.14).

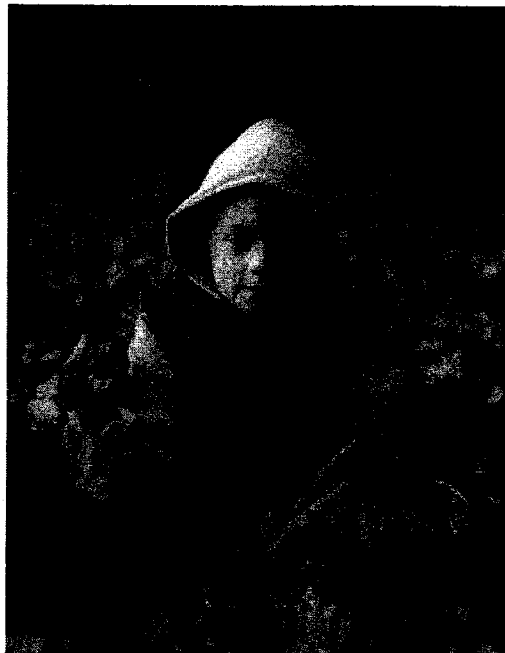
→ Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

Points: 0 extra credit points

Montana law does not address caseload standards for attorneys representing children in dependency proceedings.

**SIDEBAR NOTE:**

- ★ Montana advocates note that the state's Constitution provides that "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons" (Mont. Const., Art. II § 15 (2007)).





# Montana

Score: 79

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

"[T]he court shall immediately appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422" (Mont. Code Anno., § 41-3-425).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition" (Mont. Code Anno., § 41-3-425).

→ 3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 3 out of 20

Basis for deduction: Montana law is vague with regard to the role of counsel appointed for children in dependency proceedings.

→ 4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 6 out of 10

Montana law requires that a GAL, who may or may not be an attorney, "must have received appropriate training that is specifically related to serving as a child's court-appointed representative" (Mont. Code Anno., § 41-3-112).

Basis for deduction: Montana law does not require training of attorneys appointed pursuant to § 41-3-425, but does require training for GALs.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?

Points: 10 out of 10

Montana law gives children party status in dependency proceedings (see, e.g., *In re B.P. & A.P.*, 2001 MT 219, 306 M 430, 35 P3d 291 (2001)) and requires the child to receive notice of at least some hearings (see, e.g., Mont. Code Anno., § 41-3-115).

| States         | Criteria<br>1 | Criteria<br>2 | Criteria<br>3 | Criteria<br>4 | Criteria<br>5 | Criteria<br>6 | Extra<br>Credit | Final<br>Score |
|----------------|---------------|---------------|---------------|---------------|---------------|---------------|-----------------|----------------|
| New Mexico     | 40            | 10            | 12            | 10            | 10            | 10            | 0               | 92             |
| North Carolina | 40            | 10            | 6             | 6             | 10            | 10            | 0               | 82             |
| Ohio           | 40            | 5             | 20            | 6             | 5             | 10            | 0               | 86             |
| Oregon         | 20            | 10            | 20            | 10            | 10            | 10            | 3               | 83             |
| Rhode Island   | 40            | 10            | 6             | 8             | 10            | 10            | 0               | 84             |
| South Dakota   | 40            | 10            | 0             | 0             | 5             | 10            | 0               | 65             |
| Texas          | 40            | 5             | 20            | 9             | 5             | 6             | 0               | 85             |
| Vermont        | 40            | 10            | 20            | 0             | 10            | 10            | 0               | 90             |
| Washington     | 15            | 5             | 20            | 6             | 5             | 10            | 0               | 61             |
| Wisconsin      | 30            | 5             | 20            | 6             | 5             | 10            | 0               | 76             |

## GRADE DISTRIBUTION

| Grade | States   |
|-------|--|
| A     | Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming                  |
| B     | California, Kansas, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Wyoming  |
| C     | Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming |
| D     | Arizona, Georgia, Illinois, Kentucky, Missouri, New Hampshire, South Dakota, Washington  |
| F     | Alaska, Florida, Hawaii, Idaho, Indiana, Maine, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming   |

# POINT DISTRIBUTION

| State                | Criterion 1 | Criterion 2 | Criterion 3 | Criterion 4 | Criterion 5 | Criterion 6 | Extra Credit | Final Score |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|-------------|
| Alabama              | 40          | 5           | 0           | 8           | 10          | 10          | 0            | 73          |
| Alaska               |             |             |             |             |             |             |              |             |
| Arizona              | 15          | 10          | 20          | 3           | 5           | 10          | 0            | 63          |
| Arkansas             |             |             |             |             |             |             |              |             |
| California           | 35          | 8           | 6           | 10          | 10          | 10          | 3            | 82          |
| Colorado             |             |             |             |             |             |             |              |             |
| Connecticut          | 40          | 10          | 20          | 10          | 10          | 10          | 3            | 103         |
| Delaware             |             |             |             |             |             |             |              |             |
| District of Columbia | 40          | 10          | 6           | 9           | 5           | 5           | 3            | 78          |
| Florida              |             |             |             |             |             |             |              |             |
| Georgia              | 20          | 10          | 12          | 6           | 10          | 10          | 0            | 68          |
| Hawaii               |             |             |             |             |             |             |              |             |
| Idaho                | 15          | 5           | 4           | 6           | 5           | 10          | 0            | 45          |
| Illinois             |             |             |             |             |             |             |              |             |
| Indiana              | 15          | 5           | 3           | 0           | 10          | 10          | 0            | 43          |
| Iowa                 |             |             |             |             |             |             |              |             |
| Kansas               | 40          | 10          | 6           | 10          | 10          | 10          | 0            | 86          |
| Kentucky             |             |             |             |             |             |             |              |             |
| Louisiana            | 40          | 10          | 20          | 10          | 5           | 10          | 0            | 95          |
| Maine                | 15          | 10          | 6           | 6           | 5           | 10          | 0            | 52          |
| Maryland             | 40          | 10          | 20          | 3           | 10          | 10          | 0            | 93          |
| Massachusetts        | 40          | 10          | 20          | 0           | 10          | 10          | 5            | 104         |
| Michigan             | 40          | 10          | 6           | 0           | 10          | 10          | 0            | 76          |
| Minnesota            | 20          | 10          | 20          | 0           | 10          | 10          | 0            | 70          |
| Mississippi          | 40          | 10          | 20          | 6           | 10          | 10          | 0            | 96          |
| Missouri             |             |             |             |             |             |             |              |             |
| Montana              | 40          | 10          | 3           | 6           | 10          | 10          | 0            | 79          |
| Nebraska             |             |             |             |             |             |             |              |             |
| Nevada               | 15          | 10          | 20          | 6           | 10          | 10          | 0            | 71          |
| New Hampshire        |             |             |             |             |             |             |              |             |
| New Jersey           | 40          | 5           | 20          | 8           | 5           | 10          | 0            | 88          |

# GRADES AT A GLANCE

| State                | Score | Grade |
|----------------------|-------|-------|
| Alabama              | 73    | C     |
| Alaska               |       |       |
| Arizona              | 63    | D     |
| Arkansas             |       |       |
| California           | 82    | B     |
| Colorado             |       |       |
| Connecticut          | 103   | A+    |
| Delaware             |       |       |
| District of Columbia | 78    | C     |
| Florida              |       |       |
| Georgia              | 68    | D     |
| Hawaii               |       |       |
| Idaho                | 45    | F     |
| Illinois             |       |       |
| Indiana              | 43    | F     |
| Iowa                 |       |       |
| Kansas               | 86    | B     |
| Kentucky             |       |       |
| Louisiana            | 95    | A     |
| Maine                |       |       |
| Maryland             | 93    | A     |
| Massachusetts        |       |       |
| Michigan             | 76    | C     |
| Minnesota            |       |       |
| Mississippi          | 96    | A     |



| State          | Score | Grade |
|----------------|-------|-------|
| Missouri       | 61    | D     |
| Montana        |       |       |
| Nebraska       | 76    | C     |
| Nevada         |       |       |
| New Hampshire  | 66    | D     |
| New Jersey     |       |       |
| New Mexico     | 92    | A     |
| New York       |       |       |
| North Carolina | 82    | B     |
| North Dakota   |       |       |
| Ohio           | 86    | B     |
| Oklahoma       |       |       |
| Oregon         | 83    | B     |
| Pennsylvania   |       |       |
| Rhode Island   | 84    | B     |
| South Carolina |       |       |
| South Dakota   | 65    | D     |
| Tennessee      |       |       |
| Texas          | 85    | B     |
| Utah           |       |       |
| Vermont        | 90    | A     |
| Virginia       |       |       |
| Washington     | 61    | D     |
| West Virginia  |       |       |
| Wisconsin      | 76    | C     |
| Wyoming        |       |       |

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*Second Edition*

# A CHILD'S RIGHT TO COUNSEL

A NATIONAL REPORT CARD ON  
LEGAL REPRESENTATION FOR  
ABUSED & NEGLECTED CHILDREN



Children's Advocacy Institute



**first  
star**  
putting children first™



have the opportunity to be healthy and safe. With fewer than 1,000 children in foster care in Montana in 2010, I firmly believe we can successfully care for our foster kids.

Criminal charges against abusive parents are frequently brought in conjunction with these cases. In the criminal justice system, indigent defendants are represented by the Office of the State Public Defender (OPD). Crime victims, to the extent they are represented, are represented by prosecutors. When a child has been abused by their parents, OPD represents indigent parents and locates conflict lawyers not employed by OPD to represent the other parent(s) and the child(ren). OPD selects counsel for both the perpetrator (parent) and the victim (child). This is unacceptable.

House Bill 504 will end the conflict of the same state entity selecting lawyers for perpetrators and their victims. HB 504 will permit an entity – not OPD – dedicated to representing children to address proper training and standards for lawyers assigned to represent children. Lawyers representing children will not be held to OPD's standards even though they are not OPD employees (though many OPD and conflict lawyers adhere to these standards).

HB 504 does not cost Montana money – the funds OPD expends on lawyers for children can simply be transferred to the contracting agency. Given the ability of an agency to focus on a limited representation of only children, it may result in a net savings to Montana. It will also keep OPD from assigning its own salaried employees from serving as counsel for children, thereby eliminating the necessity of additional training for its own employees how to represent kids. Finally, is in the Court's discretion if a lawyer is to be appointed to represent a child. When judges makes that appointment, it is done out of necessity and the court is relying on the competency of the appointed lawyer to advocate within the bounds of the law. The lawyers HB 504 addresses have to be outstanding and an agency appointing those lawyers has to be knowledgeable enough to appointment competent counsel.

The children in these abuse cases need all the help they can get. Passing HB 504 can be one more step Montana takes to protect its children and give full meaning to the policy of the Chapter you are amending: "It is the policy of the state of Montana to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection." Mont. Code Ann. § 41-3-102(1)(a).

Please help protect Montana's children by ensuring their lawyers are not assigned by their abusers and pass House Bill 504.

\_\_\_\_\_/S/\_\_\_\_\_  
Matthew B. Lowy  
Child Welfare Law Specialist (NACC)

**Matthew B. Lowy**  
199 W. Pine Street  
Missoula, MT 59802  
(406) 528-4737

Judiciary Committee of the 63<sup>rd</sup> Legislature

Clayton Fiscus

Jenifer Gursky

David Halvorson

Ellie Boldman Hill

Sarah Laszlofy

Dennis Lenz

Ryan Lynch

Jerry O'Neil

Carolyn Pease-Lopez

Keith Regier

Bridget Smith

Kirk Wagoner

Wendy Warburton

February 19, 2013

Members of the House Judiciary Committee:

I write in support of House Bill 504 to direct the Office of the State Public Defender to contract with a separate entity to appoint attorneys for child abuse victims.

My name is Matthew B. Lowy. I completed college in Bozeman (2001) and my law degree in Missoula (2005). I have spent my entire legal career as a Montana prosecutor in both Gallatin and Missoula Counties. I am one of three Montana lawyers certified by the NACC as a Child Welfare Law Specialist. The bulk of my public service is representing Child and Family Services (CFS) in child abuse cases.

The cases CFS brings to court are frequently heinous. They often include child sex by family members, severe chemical dependency, and severe injuries as a consequence of physical abuse. Most people in this line of work – lawyers, social workers, and guardian ad litem – burn out in around 5-years; the emotional toll is too great to withstand. This is known as secondary trauma: the trauma endured by the children is so severe, the people working with them suffer the trauma too.

The children in these cases are the most vulnerable in Montana. They are the ones most likely to go to prison and least likely to complete high school. Montana's intervention into these families benefits these children more than most Montana citizen. Children who never stood a chance solely because of the family they were born into suddenly have an opportunity to break a cycle that has held them back from their potential. Instead of growing up to be on welfare, destitute, or criminals, these children

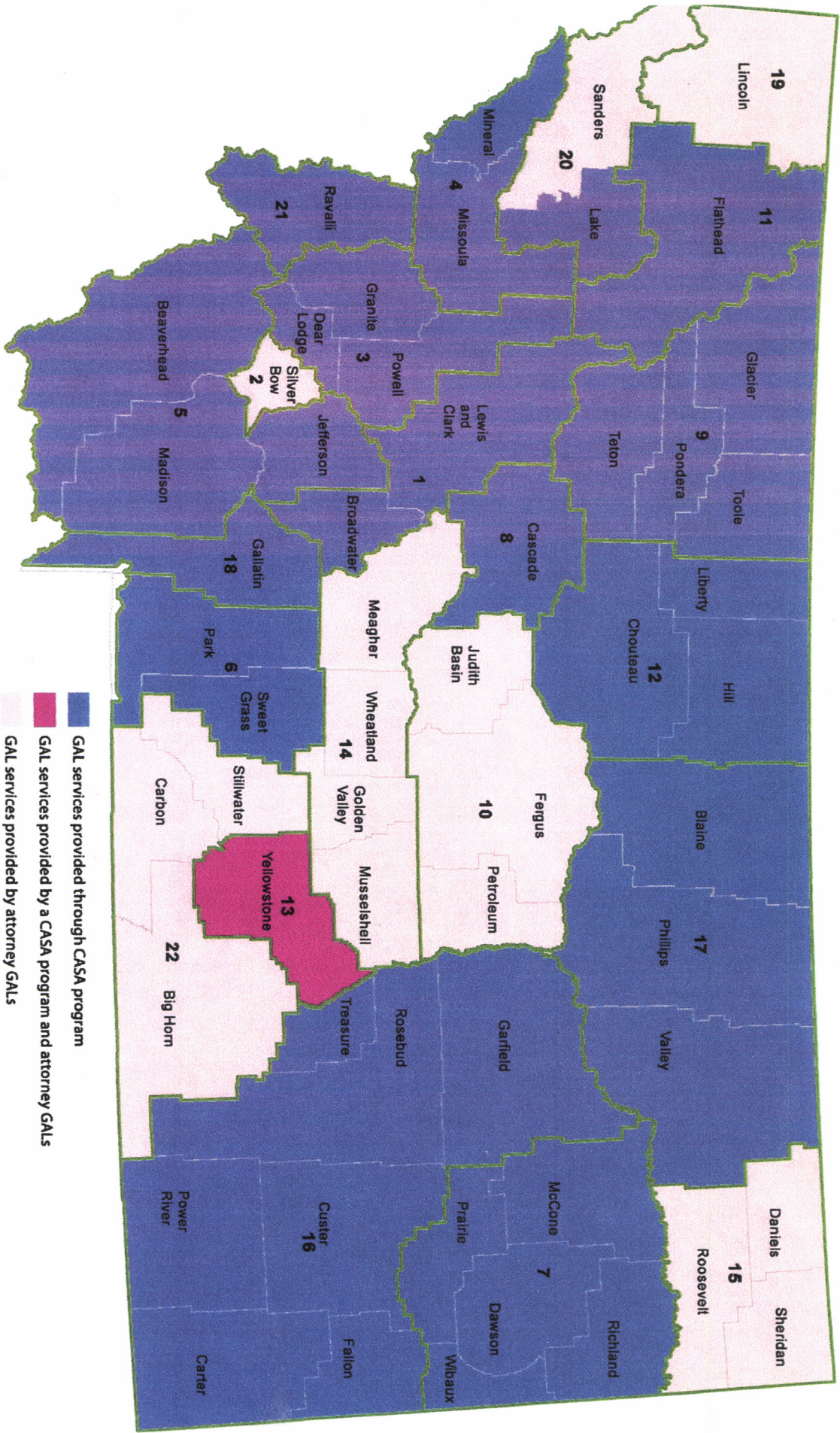


## House Bill 504 Documents Provided by Sponsor Kimberly Dudik

1. Letter in support of House Bill 504 by one of prosecutors referenced in Sponsor's statements as consulted in writing this bill.
2. Costs of Representation of Children in Dependent and Neglect Cases by the Office of the State Public Defender for FY 2012.
  - a. Total Cost: \$431,889.
  - b. Number of children represented by contract attorneys: 904 children.
3. Reports on Montana Child Legal Representation from *A National Report Card on Legal Representation for Abused & Neglected Children*, A Child's Right to Counsel, Second Edition. Available at [http://www.firststar.org/documents/Final\\_RTC\\_2nd\\_Edition.pdf](http://www.firststar.org/documents/Final_RTC_2nd_Edition.pdf).

# Judicial Branch

Child Abuse and Neglect CASA/GAL Services



Judges are required by 41-3-422, MCA to appoint a CASA/GAL for a child who is a subject of a child abuse and neglect case.



## 2013 Montana Legislature

Additional Bill Links PDF (with line numbers)

HOUSE BILL NO. 432

INTRODUCED BY K. DUDIK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; PROVIDING THAT COURT-APPOINTED SPECIAL ADVOCATES MAY ACT AS GUARDIAN AD LITEM IN ABUSE AND NEGLECT PROCEEDINGS; REQUIRING PARENTS TO APPEAR AT HEARINGS UNLESS GOOD CAUSE EXISTS IN ORDER TO CHALLENGE OR APPEAL PROCEEDINGS; ESTABLISHING TIMEFRAMES FOR HEARINGS AND RULINGS UNDER THE REASONABLE EFFORTS AND TERMINATION OF PARENTAL RIGHTS PROVISIONS; PROVIDING ADDITIONAL REQUIREMENTS FOR DISMISSAL OF A CHILD ABUSE AND NEGLECT PETITION; REQUIRING THAT APPOINTED OR ASSIGNED COUNSEL POSSESS TRAINING AND EXPERIENCE RELATING TO CHILD ABUSE AND NEGLECT; CLARIFYING THE "SHOW-CAUSE" PROVISIONS; AMENDING SECTIONS 41-3-112, 41-3-422, 41-3-423, 41-3-424, 41-3-425, 41-3-427, 41-3-604, 41-3-607, AND 41-3-609, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-3-112, MCA, is amended to read:

**"41-3-112. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative.

(3) The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:

- (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- (b) to interview or observe the child who is the subject of the proceeding;
- (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;
- (d) to make written reports to the court concerning the child's welfare, including reporting the child's stated wishes and the guardian ad litem's determinations regarding the child's best interests;



(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;

(f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.

(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.

(6) For the purposes of this chapter, a court-appointed special advocate may act as a guardian ad litem."

**Section 2.** Section 41-3-422, MCA, is amended to read:

**"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the



department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws.

~~(16) In order to contest the relief requested in a petition or motion brought under this chapter or to preserve an issue for appeal, the parent of a child must be present either in person, by telephone, or by videoconference at the hearing on the relief requested unless good cause exists."~~

**Section 3.** Section 41-3-423, MCA, is amended to read:

**"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

**findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development

of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) (a) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a)(i) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b)(ii) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c)(iii) committed aggravated assault against a child;

(d)(iv) committed neglect of a child that resulted in serious bodily injury or death; or

(e)(v) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(b) A hearing on a request under subsection (2)(a) must be held within 60 days following the filing of the request and must be concluded within 90 days following the filing of the request unless good cause exists and all parties stipulate that a hearing on the request may be held outside of this timeframe. Exceptions to this timeframe may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties, or unforeseen personal emergencies.

(c) A court shall rule on a request under subsection (2)(a) within 30 days following the conclusion of the hearing provided for in subsection (2)(b) unless good cause exists and all parties stipulate that a hearing on the request may be held outside of this timeframe. Exceptions to this timeframe may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties, or unforeseen personal emergencies.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

- (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;
- (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:
  - (i) visiting the child at least monthly when physically and financially able to do so; or
  - (ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and
  - (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

- (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
- (ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child.

Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the



court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

**Section 4.** Section 41-3-424, MCA, is amended to read:

**"41-3-424. Dismissal.** (1) Unless the petition has been previously dismissed, the court shall dismiss an abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following criteria are met:

- (1)(a) a child who has been placed in foster care is reunited with the child's parents and returned home;
- (2)(b) the child remains in the home for a minimum of 6 months with no additional confirmed reports of child abuse or neglect; and
- (3)(c) the department determines and informs the court that the issues that led to department intervention have been resolved and that no reason exists for further department intervention or monitoring; and
- (d) if appropriate, the need for a permanent parenting plan has been addressed.

(2) The court may not dismiss an abuse and neglect petition for a party's failure to abide by the timeframes prescribed by this chapter or if dismissal is not in the youth's best interests.

(3) The court may dismiss an abuse and neglect petition only if the dismissal is in the child's best interests. If the court determines that dismissal is in the child's best interests and the request for dismissal is not agreed to by all parties, the court shall, within 30 days after issuing its decision, provide all parties with a written order describing the court's reasons for its determination."

**Section 5.** Section 41-3-425, MCA, is amended to read:

**"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

- (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;
  - (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth pursuant to 41-3-112; and
  - (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.
- (3) When appropriate, the court may appoint or have counsel assigned for:

- (a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth pursuant to 41-3-112.

(4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111.

(5) Counsel appointed or assigned pursuant to this section must possess specialized training and experience involving child abuse and neglect, including an understanding of child abuse and neglect statutory and case law and experience in or training regarding representing a parent if appointed or assigned to represent a parent pursuant to subsection (2)(a) or experience in or training regarding representing a child if appointed or assigned to represent a child pursuant to subsection (2)(b) or (3)(b).

(6) Counsel appointed or assigned to represent a child shall:

(a) consult with the child to the extent reasonably possible;

(b) report to the court the child's express wishes to the extent the child's wishes have been verbalized to counsel, including any express wishes of the child that counsel determines are not in the child's best interests and the basis for counsel's determination that the child's express wishes are not in the child's best interests;

(b) not advocate for the child's express wishes if the child cannot verbalize a preference or is preverbal. In this instance, the child's best interests shall be reported to the court by a guardian ad litem;

(c) if a child does not or cannot express a preference about particular issues or if the child is preverbal, determine and advocate the child's best interests through the use of objective criteria, including but not limited to:

(i) a determination of the child's circumstances through contact with the child; and

(ii) a full and efficient investigation that includes utilization of medical, mental health, education, social work, and other professionals involved with the child's life and well-being;

(d) subject to subsection (6)(b), refrain from advocating a position that may be harmful to the child's best interests; and

(e) keep confidential communications with or confidential information about the child confidential pursuant to the Rules of Professional Conduct, unless:

(i) the child consents to disclosure if the child is able to provide consent; and

(ii) the child's guardian ad litem consents to disclosure; and

(iii) if temporary legal custody of the child has been awarded to the department, the department consents to disclosure."

**Section 6.** Section 41-3-427, MCA, is amended to read:

**"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

(1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

(d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit. Within 10 days following the service of the petition and affidavit, a person requesting a contested show cause hearing shall file with the court and provide to the parties written notice of the request and a written description stating with specificity the person's objection to the affidavit unless good cause exists and all parties stipulate that the show cause hearing may be held outside of the timeframe prescribed by 41-3-432 within 10 days following service of the petition and

affidavit. The request for a contested show cause hearing must be in writing. The show cause hearing must be held within the timeframe described in 41-3-432 unless the parties stipulate otherwise.

(e) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
- (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- (c) the right for the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
- (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- (f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
- (g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and



(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

**Section 7.** Section 41-3-604, MCA, is amended to read:

**"41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a

report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in ~~41-3-423(2)(a) through (2)(e)~~ 41-3-423(2)(a)(i) through (2)(a)(v) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed."

**Section 8.** Section 41-3-607, MCA, is amended to read:

**"41-3-607. Petition for termination -- separate hearing -- no jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

(6) Any hearing on a petition for the termination of the parent-child legal relationship must be held within 90 days following the filing of the petition and concluded within 120 days following the filing of the petition. unless good cause exists and all parties stipulate that the hearing may be held outside of this timeframe. The court shall rule on the petition within 60 days following the conclusion of the hearing. Exceptions to this timeframe may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties, or unforeseen personal emergencies.

**Section 9.** Section 41-3-609, MCA, is amended to read:

**"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents;
- (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (d) the parent has subjected a child to any of the circumstances listed in ~~41-3-423(2)(a) through (2)(e)~~ 41-3-423(2)(a)(i) through (2)(a)(v);
- (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or
- (f) the child is an adjudicated youth in need of care and both of the following exist:
  - (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and
  - (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

- (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;



- (b) a history of violent behavior by the parent;
  - (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and
  - (d) present judicially ordered long-term confinement of the parent.
- (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.
- (4) A treatment plan is not required under this part upon a finding by the court following hearing if:
- (a) the parent meets the criteria of subsections (1)(a) through (1)(e);
  - (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;
  - (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or
  - (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.
- (5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

**NEW SECTION. Section 10. Applicability.** [This act] applies to proceedings begun on or after October 1, 2013.

- END -

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**Latest Version of HB 432 (HB0432.01)**

Processed for the Web on February 9, 2013 (12:24pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

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